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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/637,845

08/07/2003

Fernando Stroppiana

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04/04/2007

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC

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EXAMINER

WOLLSCHLAGER, JEFFREY MICHAEL

ART UNIT

PAPER NUMBER

1732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

04/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/637,845

Applicant(s)

STROPPIANA, FERNANDO

Examiner

Jeff Wollschlager

Art Unit

1732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

It is noted for the record that Examiner Wollschlager has assumed responsibility for this application from Examiner Eashoo.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 9, 2007 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites that the vulcanized material is chromatically homogeneous. It is unclear how this limitation further limits the claim from which it depends since the result of the process of claim 1 is a chromatically homogenous material free from phenomena of directionality/color variation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stroppiana (EP 0 968 804 A2) in view of Smith et al. (US Pat. 3,039,137) and Armstrong (GB 617,266) and as evidenced by Rosato (Extruding Plastics – A Practical Processing Handbook, Table 2.17, page 137).

Regarding claims 1, 10, 12 and 14-16: Stroppiana teaches the basic claimed process of forming a strip of elastomeric material, comprising: feeding an extruder strips of vulcanizable elastomeric material having different colors (3:1-10); extruding the elastomeric material through a die plate and forming a granular material (Fig. 1, elements 2-5 and 3:5-20); forming the granular material into a gap wherein pressure is applied to form a strip of vulcanizable elastomeric material (Fig. 1, elements 7-11); and subjecting the strip to vulcanization (Fig. 1, element 12 and 4:1-15). It is intrinsic that the colored strips fed to the extruder are at least partially mixed in the extruder. Stroppiana further teaches that a "substantially uniform surface appearance" can also be made (3:1-10) in contrast to a non-uniform surface appearance. As such, it is submitted that it is well within the skill of an ordinary artisan that a "uniform surface appearance" is achieved by either using a chromatically homogeneous starting material

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or by blending different colored starting materials to form a chromatically homogeneous material.

It is further submitted and is evidenced by Rosato (Table 2.17) that the teaching by Stroppiana at (3:1-10) suggests controlling the chromatic homogeneity to create a uniform surface appearance of the color of the extruded material with starting materials of different color, for example, by adjusting screw speed and controlling extrusion temperature. As such, the uniform surface appearance created by Stroppiana suggests to the ordinarily skilled artisan a uniform surface appearance being created from either a single color or multi colored feed material. The examiner further notes that the relative weight ratios of the differently colored starting materials and the specific starting materials (e.g. actual colors, shades, degree of compatibility, etc.) to be employed is not claimed and that it is well known in the art that the degree of mixing required to form a homogenous mixture is also impacted by the relative weight ratios of the differently colored materials to be mixed and the actual materials being mixed.

Stroppiana does not teach mixing granular material and then gravity feeding the mixed material to a strip forming unit. However, Smith et al. teaches mixing granular material and then gravity feeding the mixed material to a strip forming unit (Figs. 1-2, elements 14, 16, and 18). The degree of homogeneity can intrinsically be increased by increasing the degree of mixing. Stroppiana and Smith et al. are combinable because they are from the same field of endeavor, namely, forming colored plastic sheeting. At the time of invention a person of ordinary skill in the art would have found it obvious to have mixed granular material and then gravity feed the mixed material to a strip forming

unit, as taught by Smith et al., in the process of Stroppiana, and would have been motivated to do so because Smith et al. suggests that such feeding means is an equivalent and alternative means to feed colored granules to a strip forming unit.

Stroppiana does not teach using calendar rolls to form a strip. However, Armstrong teaches using calendar rolls to form a strip and feeding the material to the gap in the calendar rolls vertically (Figs. 2, element 14). Armstrong also teaches that the feed rate to the calendar rolls is at a rate which maintains a bank of material at the nip/gap (1:45-60). Stroppiana and Armstrong are combinable because they are from the same field of endeavor, namely, forming variegated plastic sheeting. At the time of invention a person of ordinary skill in the art would have found it obvious to have using calendar rolls to form a strip, as taught by Armstrong, in the process of Stroppiana, and would have been motivated to do so because Armstrong suggests that calendar rolls are an equivalent and alternative means to shape colored granules into a strip.

Regarding claims 2 and 9: Stroppiana teaches storing granular material (Fig. 1, element S). Furthermore, it is submitted that it is intrinsic, if not obvious, that the granular material reaches room temperature while in storage.

Regarding claims 3-8: Stroppiana teaches that the fragmented/granulated material can have various morphologies (2:49-55) and sizes (3:5-15). As such it is submitted, absent a teaching of unexpected results, that the particular size and crescent shape of the instantly claimed granular material is obvious choice of a known granular shape as suggested by Stroppiana.

Regarding claim 11: The examiner recognizes that the claimed processing

temperature range is not substantially taught by the applied references. However, the reference(s) all teach the use of particular ingredients and therefore inherently place limits upon processing conditions. Since the instant claims are not limited to a specific material, it is submitted that it is well known in the molding art to optimize processing temperature depending upon the material being processed and would have found it obvious to do so using routine experimentation in order to form desired physical characteristics in the final molded product.

Response to Arguments

Applicant's arguments filed January 9, 2007 have been fully considered but they are not persuasive.

Applicant's arguments appear to be on the following grounds:

1. The method disclosed by Stroppiana can provide a substantially uniform surface appearance if and only if strips of one single color are used as described in the 1.132 Declaration

2. The examiner has employed impermissible hindsight in making the rejection.
3. Smith and Armstrong teach away from the homogenous limitations found in claim 1 since both Smith and Armstrong are directed to making multi-colored products.

Applicant's arguments are not persuasive for the following reasons:

1. As discussed in the rejection above, it is submitted and is evidenced by Rosato (Table 2.17) that the teaching by Stroppiana at (3:1-10) suggests controlling the chromatic homogeneity to create a uniform surface appearance of the color of the

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extruded material with starting materials of different colors, for example, by adjusting screw speed and controlling extrusion temperature. As such, the uniform surface appearance created by Stroppiana and discussed at (3:1-10) suggests to the ordinarily skilled artisan a uniform surface appearance being created from either a single color or multi colored feed material. The examiner further notes that the relative weight ratios of the differently colored starting materials and the specific starting materials (e.g. actual colors, shades, degree of compatibility, etc.) to be employed are not claimed and that it is well known in the art that the degree of mixing required to form a homogenous mixture is also impacted by the relative weight ratios of the differently colored materials to be mixed and the actual materials being mixed.

The examiner further notes that Stroppiana discloses a container (6), means for storage (S), and a metering device such as a hopper (11) and that Smith shows a means for storage/hopper that includes a screw, as is conventional in such hoppers, for conveying and metering the material out of the hopper. This screw employed by Smith intrinsically further mixes the material.

2. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a

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reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

3. The examiner notes that Stroppiana discloses producing material that has a uniform surface appearance/substantially chromatically homogeneous material as discussed above. Further, the hopper employed by Smith, and suggested by Stroppiana, employs a metering device/screw that further mixes the material, also improving the homogeneity of the mixture. Smith and Armstrong are not employed for their teaching of creating a chromatically homogeneous material but for substitution of equivalent and alternative means for processing colored granules as set forth in the rejection above.

Conclusion

All claims are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Wollschlager whose telephone number is 571-272-8937. The examiner can normally be reached on Monday - Thursday 7:00 - 4:45, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JW

Jeff Wollschlager
Examiner
Art Unit 1732

March 22, 2007

CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER
4/1/07